IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. 1[illegible]

ILLINOIS STEEL COMPANY,

Petitioner,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND SUPPORTING BRIEF.

PAUL R. CONAGHAN,
Counsel for Petitioner.

PRINTED BY CHICAGO LAW PRINTING CO.

SUBJECT INDEX.

TABLE OF CASES CITED.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. .....

ILLINOIS STEEL COMPANY,

Petitioner,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND SUPPORTING BRIEF.

To the Honorable, the Supreme Court of the United States:

Your petitioner, Illinois Steel Company, respectfully represents that it is aggrieved by the final judgment of the Appellate Court of Illinois reversing the judgment of the Superior Court of Cook County in favor of your petitioner and remanding the case to the Superior Court of Cook County (the trial court) with directions to enter a judgment for the respondent and against your petitioner in the sum of $3,675.52 and costs (R. 62).

A.

Summary and Short Statement of the Matter Involved.

In an amended complaint filed in the Superior Court of Cook County on February 28, 1934 (R. 2, 3), the respondent sought to recover from your petitioner a balance of freight charges claimed to be due on a number of shipments of sulphate of ammonia made by your petitioner

as consignor from its plant at Gary, Indiana, to Wholesale Sulphate and Acid Works, Inc., Baltimore, Md., as consignee, for export.

Attached to the complaint was an exhibit giving complete data as to each shipment, including the lawful charge, the amount paid by your petitioner, and the balance claimed to be due (R. 4, 5). Your petitioner prepaid the freight charges at the export rate. Additional charges are alleged to be due because the export rate is alleged not to be applicable to the shipments. The respondent claims that the domestic rate, higher than the export rate, was applicable under the tariffs of the carriers making the shipment.

The case was tried before the trial court upon the stipulation of facts. The trial court found the issues in favor of your petitioner and entered a judgment for costs against the respondent (R. 22, 23). The respondent appealed to the Appellate Court of Illinois, First District.

On rehearing on December 2, 1942, the Appellate Court reversed the judgment of the Superior Court and remanded with directions to enter a judgment for the respondent and against your petitioner in the sum of $3,675.52 and costs (R. 62).

Thereafter, your petitioner filed its petition for leave to appeal in the Supreme Court of Illinois. This petition was denied on March 11, 1943 (R. 66). The denial of this petition by the Supreme Court of Illinois makes final the judgment of the Appellate Court.

B.

Statement of the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Reverse the Judgment of the Appellate Court of Illinois, First District.

The jurisdiction of this Court to grant this petition for a writ of certiorari is invoked by Sections 237(b) and

240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. 344, 350).

The judgment of the Appellate Court sought to be reversed by your petitioner, in effect was affirmed by the Supreme Court of Illinois on March 11, 1943, when the Supreme Court of Illinois, the highest court of the State, denied your petitioner's leave to appeal (R. 66). The time limit for filing this petition for certiorari runs from the date when your petitioner's leave to appeal was denied by the Supreme Court of Illinois, or from March 11, 1943. (*Chicago and E. I. Railroad Co.* v. *Industrial Commission*, 285 U. S. 296; *C. & O. Ry. Co.* v. *Mihas*, 208 U. S. 102; *Minneapolis, St. Paul and Sault Ste. Marie* v. *Rock*, 279 U. S. 410.)

The rule announced by the Appellate Court in the case at bar (R. 28-41) conflicts with the decisions of this Court in *L. & N. R. R.* v. *Central Iron Co.*, 265 U. S. 59, 66, and of the Federal District Court in the case of *Chicago, Great Western Ry. Co.* v. *Hopkins, et al.*, 48 Fed. Supp. 60, and deprives your petitioner of its property without due process of law by the improper construction of the "no recourse" clauses in uniform bills of lading issued pursuant to and in compliance with the Interstate Commerce Acts.

The federal law as construed by the Federal Courts is supreme. Any state decision conflicting with the construction of the Federal Courts is erroneous. *L. & N. R. R. Co.* v. *Central Iron Co.*, 265 U. S. 59, 66; *In the Matter of Bills of Lading*, 52 I. C. C. 671; 64 I. C. C. 357; 66 I. C. C. 63; 167 I. C. C. 214; 172 I. C. C. 362.

The question whether prepayments to the initial carrier of the amounts set forth in bills of lading deprive your petitioner of the benefit of "no recourse" clauses in uniform bills of lading in the event that the carrier, contrary to the provisions of this clause, parts with the possession of the property shipped without collecting all charges due, remains unsettled by the conflict of the opinion of the

Appellate Court in the case at bar, with the opinions of this Court in *L. & N. R. R.* v. *Central Iron Co.*, 265 U. S. 59, 66 and of the Federal District Court of Minnesota in *Chicago Great Western Ry. Co.* v. *Hopkins, et al.*, 48 Fed. Supp. 60.

The matter of the construction of "no recourse" clauses in uniform bills of lading is important to all carriers, shippers and consignees. It has assumed special importance recently because of the many Lend-Lease shipments.

The conflict in the decisions of the Appellate Court, this Court and the Federal District Court of Minnesota will tend to create a diversity of decisions in the lower courts. This will seriously affect uniformity and the administration of settled rules of construction in other cases.

This Court should exercise its jurisdiction in this case not merely to determine whether there was an improper application of controlling leading principles but for the purpose of pronouncing the legal principles which should be applied. The question is not one of mere applicability of rules of law. The question of what legal rules should be applied to consignees who ship prepaid on "no recourse" bills is the important question which should be finally determined by this Court granting this petition for a writ of certiorari.

C.

The Questions Presented.

1. Whether the purpose of the "no recourse" clause in uniform bills of lading is to protect the consignor from liability for charges known or unknown, including subsequently discovered undercharges or additional charges, when a delivering carrier makes delivery without requiring the payment of such charges, contrary to the stipulation in the bill of lading.

2. Whether a delivering carrier, contrary to the provisions of the "no recourse" clause parts with the possession of the property shipped without collecting from the consignee all charges due, may collect subsequently discovered undercharges or additional charges from the consignor who shipped "prepaid" or whether the delivering carrier must look for payment solely to the consignee.

3. Whether a carrier in making a delivery to the consignee without requiring payment of charges subsequently discovered to be due on shipments prepaid by the consignor under "no recourse" bills of lading, which provide in part that the consignor "shall not be liable for such charges," may, notwithstanding the provisions of a "no recourse" clause in bills of lading, collect subsequently discovered undercharges or additional charges from the consignor.

4. Whether, under such circumstances, if the delivering carrier knows or should have known that it was not making deliveries required by the export tariff under which the consignor directed prepaid shipments to be made, the carrier's only remedy for additional charges resulting from diverted deliveries is against the consignee who knows or should have known of the diversions or, in addition, against the consignor.

5. Whether part payment of all charges to the initial carrier before shipments began moving for export under "no recourse" bills of lading stamped prepaid, render the consignor, or the consignee alone, liable to the delivering carrier for the balance of charges discovered by the delivering carrier to be due after delivery.

6. Whether, under such circumstances, the rule of the Appellate Court that the consignor is liable shall prevail or whether there shall prevail the rule of the Federal Courts that the consignor is not liable and the delivering carrier must look solely to the consignee.

D.

Reasons Relied On For the Allowance of Writ.

The rule of the Appellate Court conflicts with the rule of the Federal Courts. There should be uniformity in the rule to be applied. Vicarious construction of uniform bills of lading should not be permitted to create unnecessary risks or uncertainties in interstate shipments by common carrier. The facts are undisputed. The parties have stipulated as to them (R. 14-21).

The problem presented is merely a matter of construction of the "no recourse" clause, Section 7 and the prepayment clause in uniform bills of lading as applied to the facts. There should be uniformity in the construction of bills of lading because the documents themselves are uniform. The matter is of such commercial importance to carriers, shippers and consignees that clauses in uniform bills of lading should not bring one result in the Illinois Courts and other state courts which may follow the Illinois rule and another result in the Federal Courts. Such an important question should be reviewed by this Court upon certiorari.

Respectfully submitted,

ILLINOIS STEEL COMPANY,
Petitioner,

PAUL R. CONAGHAN,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. .....

ILLINOIS STEEL COMPANY,
Petitioner,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Report of Opinion.

The opinion of the Appellate Court on rehearing (R. 44-62) is reported in 316 Ill. Appellate 516 and 46 N. E. 2nd 144.

II.

Statement of Grounds on Which Jurisdiction of This Court Is Invoked.

Jurisdiction of this Court is invoked in accordance with the provisions of Sections 237(b) and 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28

U. S. C. A. 344, 350) and as more particularly set forth in Part B of the preceding petition.

III.

Statement of the Case.

A concise statement of the case is made in the petition preceding under Part A.

IV.

Specification of Assigned Errors Intended to be Urged.

The Appellate Court erred:

1. In construing that part of Section 7 (the "no recourse" clause) of the uniform bills of lading, approved by the Interstate Commerce Commission and executed by your petitioner on each shipment, which provided:

> "Sec. 7. * * * The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. * * *" (R. 18, 47.)

so as to render liable your petitioner as consignor, notwithstanding the fact that the carrier made delivery of the shipments without requiring payment of the charges subsequently discovered or found to be due.

2. In holding that the "no recourse" clause was not applicable to the situation covered by the stipulation of facts.

3. In holding that the "no recourse" clause was inapplicable to prepaid shipments.

4. In reversing the judgment of the trial court and remanding the case to the trial court with directions to enter judgment for the plaintiff and against your petitioner in the sum of $3,675.52 and costs.

V.

ARGUMENT.

A.

The Carrier Made Deliveries of the Shipments Before Receiving Payment of All Charges Due. After Such Deliveries, the Carrier Surrendered All Claims Against Your Petitioner.

Section 7 of the uniform bills of lading, approved by the Interstate Commerce Commission and executed by your petitioner on each shipment in this case, in part provided:

> "Sec. 7. * * * The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. * * *" (R. 17, 18).

The parties stipulated (R. 17) that each of the bills of lading covering the shipments in question was signed by

an authorized employee of your petitioner, in part, as follows:

> "If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
>
> "The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See Section 7 of conditions.)
>
> Illinois Steel Company,
>
> Per .....
>
> (Signature of Consignor)"

That part of Section 7 of the uniform bills of lading hereinbefore quoted expressly provides that the consignor shall not be liable for freight and other lawful charges if the consignor signs the "no recourse" clause on the face of the bill of lading and if delivery is made to the consignee without requiring payment of the freight, and all other lawful charges from the consignee.

When the carrier made deliveries to the consignee without requiring payment of all lawful charges, the bill of lading clearly provides that the consignor "shall not be liable for such charges."

In the Matter of Bills of Lading, 52 I. C. C. 671, the Commission at page 721 stated:

> "• • • In order to secure exemption from liability for the freight charges in case the shipment is delivered to the consignee without the collection of such charges, the consignor is required to append his signature to the following statement in a space on the face of the bill of lading provided for that purpose: 'The carrier shall not make delivery of this shipment without payment of freight and other lawful charges.'"

In the case of *L. & N. R. R. Co.* v. *Central Iron Co.*, 265 U. S. 59, this Court at page 66 stated:

"By that provision the consignor may (see Section 7 of Conditions and clause on face of bill) relieve himself of all liability for freight charges."

In *Chicago Great Western R. R. Co.* v. *Hopkins, et al.*, 48 Fed. Supp. 60, the Court at page 62 stated:

"In other words, it is fair to assume that the parties intended that any lawful charges in addition to those paid must be collected from the consignee if delivery was accepted by such consignee under the contract which the consignor and the carrier had entered into. This interpretation of the agreement between the parties seems eminently fair and reasonable. Certainly, the situation herein will not warrant a finding that the parties indulged in a futile and aimless thing when they entered into the 'no recourse clause.' It is reasonable to believe that they did so for some purpose, and the purpose as herein indicated and construed is entirely consistent and compatible with the prepayment of the freight charges as computed by the parties. This construction squares not only with the apparent intent of the parties, but does not violate the rights of the consignee. The latter, upon receipt of the freight, was informed that there would be no recourse on the consignor for any freight charges or other lawful charges in addition to that which had been paid. The consignee therefore accepted the shipment with knowledge that he alone must respond for any deficiency in the freight charges. *Pittsburgh, C., C. & St. L. Ry. Co.* v. *Fink, supra.* [250 U. S. 577.] It is my opinion, therefore, that the 'no recourse' contract entered into between the consignors and the carrier discharges the consignors from any claim of

undercharges after the shipment has been received and accepted by the consignee under the uniform bill of lading as executed herein."

The law is well settled that a consignee cannot accept delivery without incurring liability for the carrier's charges, known or unknown, or discovered subsequent to delivery, whether those charges were supposed to have been prepaid or otherwise, and regardless of the consignee's actual relation with the consignor. (*Western and Atlantic R. R. Co.* v. *Underwood*, 281 Fed. 891; *L. & N. R. R. Co.* v. *Central Iron Co.*, 265 U. S. 59; *Pittsburgh, C., C. & St. L. Ry. Co.* v. *Fink*, 250 U. S. 577.)

Delivery of goods for shipment does not necessarily import an obligation of the consignor to pay the freight charges. The carrier and consignor are free to contract as to when and by whom full payment shall be made. (*L. & N. R. R. Co.* v. *Central Iron Co.*, 265 U. S. 59.)

In the case at bar, the carrier and the consignor did contract that the consignor shall not be liable for the charges in the event that the carrier made delivery without requiring payment of all lawful charges. The Appellate Court decision prevented performance of this contract by the construction (in effect making a new contract) that the "no recourse" clause is not applicable when the shipment is prepaid.

B.

The Place of the Carrier's Delivery Made the Export Tariffs Inapplicable. The Carrier Knew or Should Have Known That It Was Not Making Deliveries Required by the Export Tariff. The Carrier's Sole Remedy for Freight Charges Resulting From These Diverted Deliveries Was Against the Consignee Directing the Diversions.

The place where the carrier spotted the shipments for unloading made the export tariff inapplicable. At the

time of each delivery the carrier knew or should have known that additional charges were applicable. The carrier should have no claim against your petitioner because of the provisions of the "no recourse" clause. The sole remedy of the carrier should be against the consignee.

The stipulated facts recite that the carrier delivered shipments to the consignee for unloading "through the doors in the sides of said buildings and dumped into bins" (R. 16).

Thereafter, the consignee placed the shipment "in bags and handled through the doors in the ends of the building across short uncovered wharves or aprons and loaded into steamers alongside such wharves and exported" (R. 16). The carrier knew or should have known that it was not delivering these shipments "to the steamer or steamers direct," as required by the export tariff.

C.

Part Payments of the Charges to the Initial Carrier Before Shipments Under "No Recourse" Clauses in Bills of Lading Rendered the Consignee Alone Liable to the Carrier For the Balance of Charges Due After Delivery.

There was prepayment of part of the charges on each shipment made. Each bill of lading (R. 18) contained the following statement signed by the initial carrier:

"Received $..... to apply in prepayment of the charges on the property described hereon.

.....

Agent of Cashier

Per .....

(The signature here acknowledged only the amount prepaid.)"

The prepayment of the export charges by your petitioner on each shipment in fact was a part payment of all of the charges. This part prepayment, even under the decision of the Appellate Court in the case at bar, renders operative the "no recourse" clause and protects your petitioner as consignee from the balance of the lawful charges in each case, where as in the case at bar, the carrier made delivery without requiring payment of all of its lawful charges.

CONCLUSION.

The carrier lost its claim against the consignor when it delivered the shipments contrary to the stipulation in the bills of lading to the consignee without requiring payment of all of the lawful charges.

The very purpose of the "no recourse" clause is to protect a consignor from liability for unknown charges, including subsequently discovered undercharges or additional charges. In the event that the carrier, contrary to the provisions of the "no recourse" clause, parts with possession of the property shipped without collecting all charges due, the carrier must look for payment to the consignee alone. If the carrier intends to hold the consignor liable for all lawful charges on prepaid shipments containing "no recourse" clauses in bills of lading, the carrier must retain possession of the property shipped until it determines that all charges due have been paid.

The petitioner should be granted a writ in this case to make certain the applicable rules of law to consignors who ship under "no recourse" bills. Otherwise, the present confusion created by the Appellate Court opinion in the case at bar will create even greater uncertainties.

Respectfully submitted,

PAUL R. CONAGHAN,
Counsel for Petitioner.